

UNITED STATES FEDERAL ELECTION COMMISSION

DANIEL G. HEMPEY  
3175 Elua Street, Suite C  
Lihue, H 96766

Complainant,

v.

COLLEEN HANABUSA  
c/o Hanabusa for Hawaii  
P.O. Box 1416  
Honolulu, Hawaii 96806

Respondent.

MUR No. 6748

CELA

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FEDERAL ELECTION  
COMMISSION

**RESPONSE OF CHRISTOPHER RAYMOND**

Christopher Raymond, by and through the undersigned attorneys, submits the following response to the notification sent by the Federal Election Commission in the above-captioned matter.

**I. INTRODUCTION**

Apparently, many months after an August 2013 complaint was received naming the Hanabusa Senate campaign in connection with an aborted preliminary plan, possibly for funding certain messaging by PhRMA or its PAC, the Commission decided to send a copy of the complaint to Mr. Raymond asking for a response to some un-mentioned legal theory that might implicate Mr. Raymond himself. Aside from the delayed notice, and aside from the fact that any purported plan by PhRMA or its PAC to distribute messaging that might have some reference to issues or topics associated with Rep. Hanabusa *was completely abandoned*, the Commission wants Mr. Raymond to hypothesize regarding a theory under which he would be in violation of the law. As a matter of due process, the Commission should do far better to provide an "internally-generated" respondent some basis for knowing what might be on the Commission's mind.

If the Commission is suggesting that Mr. Raymond might be personally liable for having *aided or abetted an attempted or suggested* coordinated communication, it is clearly acting beyond its jurisdiction. There are a few instances where the Commission purportedly has created

liability for aiding or abetting a violation,<sup>1</sup> but there is absolutely no authority for the Commission asserting liability of Mr. Raymond for aiding or abetting any coordinated expenditure by PhRMA or its PAC—even if it had occurred.

Further, there is no authority for the Commission to pursue any *attempted or suggested* coordinated expenditures—by PhRMA or anyone else. While the statute at 2 U.S.C. § 437g(a)(2) indicates the Commission has enforcement authority if it has reason to believe a person “is about to commit” a violation, this is a far cry from pursuing an individual for having merely had preliminary discussions regarding a *long-abandoned idea*. There is no “attempted coordinated expenditure” violation set forth in the Act (or Commission regulations). If PhRMA in fact had made a coordinated expenditure within the meaning of FECA, there would have been a legal theory for pursuing PhRMA (for making an in-kind contribution prohibited under 2 U.S.C. § 441b(a)) and for pursuing the Hanabusa campaign (for knowingly accepting or receiving such contribution prohibited under § 441b(a)). But, since any preliminary discussions about PhRMA or PhRMA PAC messaging were completely dropped, there is simply no legal basis for pursuing PhRMA, PhRMA PAC, the Hanabusa campaign, or Mr. Raymond under coordinated communication theories.<sup>2</sup>

If, alternatively, the Commission is hoping Mr. Raymond can be pursued for soliciting or directing the use of federally impermissible funds in connection with a federal election in violation of 2 U.S.C. § 441i(e)(i), the facts demonstrate that Mr. Raymond did neither.

## II. FACTUAL AND LEGAL ANALYSIS

Mr. Raymond has prepared a Declaration Under Penalty of Perjury (attached) that tracks what he said to the Department of Justice and Federal Bureau of Investigation in an interview on October 7, 2013. The following tracks that factual recitation and provides relevant legal analysis.

At a June 17, 2013 “meet and greet” organized by and for the Hanabusa campaign, Mr. Raymond briefly met and merely exchanged pleasantries with Mr. Nick Shipley. Separately, a person who worked for one of the drug companies (Mr. Raymond does not remember her name), indicated to Mr. Raymond that PhRMA probably would be interested in providing support to Rep. Hanabusa. This person gave no indication of whether this referred to: (A) PhRMA PAC

<sup>1</sup> See 11 C.F.R. § 110.4(b)(1)(iii) (knowingly helping or assisting any person in making a contribution in the name of another); 11 C.F.R. § 110.20(h) (knowingly providing substantial assistance in the solicitation, making, acceptance, or receipt of a foreign national donation). Note that the underlying statute does not give the Commission authority to establish even these “assist” theories of liability. See 2 U.S.C. § 441f, 441e.

<sup>2</sup> The pertinent statute at 2 U.S.C. § 441b(a) prohibits the knowing acceptance or receipt of a corporate contribution by any “candidate, political committee, or other person,” but again, ultimately there was no expenditure of funds by PhRMA, hence no corporate contribution and no acceptance or receipt by any person whatsoever. Further, as it relates to Mr. Raymond, the statute provides not a hint of authority to pursue anyone for an “attempted” or “suggested” contribution.

support, (B) PhRMA PAC assistance with raising funds from PACs of various member companies of PhRMA, (C) PhRMA internal communications to member company representatives urging company PAC contributions, (D) PhRMA help with "issue" messaging that would relate to legislative issues of interest to Rep. Hanabusa, or (E) some other perfectly legal option.

Mr. Raymond up to this point only had been involved tangentially, as a volunteer, helping the Hanabusa campaign with typical Washington, DC fundraising events that focused on raising PAC funds. Mr. Raymond's limited role in volunteering with the Hanabusa campaign led him to believe that the woman's general comment about support referred to either a potential PAC contribution from PhRMA PAC, or potential help raising PAC contributions from the various member companies of PhRMA.

The same day as the "meet and greet," Mr. Raymond sent a follow-up email to Mr. Shipley thanking him for attending and stating, "There is no doubt the Congresswoman would benefit from the support of PhRMA – as she mentioned we are starting this race at a significant financial disadvantage. If there are any more questions you might have or you might want to discuss the race in more detail before making a decision, I would be glad to set up a breakfast with the three of us." Raymond Declaration, Attachments at CR000002. From Mr. Raymond's perspective, this was a standard follow-up to a generally expressed willingness to provide support to the Hanabusa campaign. Certainly, as of this point, there is nothing to suggest that Mr. Raymond, functioning as an agent of the Hanabusa campaign, had solicited any funds in connection with a federal office from any source not subject to the limits, prohibitions, and reporting requirements of FECA. In his mind, he was only following-up on a generic offer of support from a PhRMA representative, and the support would be from PhRMA's PAC or the PACs of member companies of PhRMA—sources of funding that indeed are subject to the limits, prohibitions, and reporting requirements of FECA.

The next day, on June 18, 2013, Nick Shipley emailed Mr. Raymond stating, "I appreciate you reaching out, and I want to take you up on your offer. I think there is a lot of interest in our organization in supporting the Congresswoman; she really understands our issues. . . . I would like to also bring along Bob Phillipone, our Senior VP for Federal Affairs; he works extensively in our political program. I have already discussed this with him a couple times, and I think we can talk more extensively in person about what we can do here to help support the Congresswoman." *Id.* While this message did not refer to PhRMA PAC support, or the PAC support of member companies of PhRMA, it did not occur to Mr. Raymond that any other kind of PhRMA support was contemplated.

Mr. Raymond worked out having the Congresswoman meet with Mr. Shipley and Mr. Phillipone on the morning of June 26. Mr. Raymond was ill on that date, and thus missed the meeting. He received a text message from Erica Slates (Deputy National Finance Director for Hanabusa Senate campaign) shortly after the meeting saying, "Went very well – they're all in." Mr. Raymond responded, "What type of money did they promise?" Ms. Slates replied, "They'll do PAC bundling in addition to a couple other things. Can we do a quick phone call when you're up to it?" Raymond Declaration, Attachments at CR000010. From Mr. Raymond's

perspective, this was the first time he had become aware that anything other than PAC support was contemplated on the part of PhRMA.

Mr. Shipley later on the 26th responded to an email from Mr. Raymond asking how the meeting went. Mr. Shipley wrote, "[T]he meeting went great, we very much want to (and will) help out the Congresswoman. PhRMA can do the obvious PAC donations, but I think we are going to look at doing some independent stuff as well. It was very helpful to spend some time with the Congresswoman to understand what works and doesn't work in Hawaiian politics and what messages may be important." Raymond Declaration, Attachments at CR000007. This was the first time Mr. Raymond became aware that some "independent stuff" might be contemplated by PhRMA.

Mr. Raymond is not a lawyer, let alone a campaign finance lawyer. He has not been trained in campaign finance law, and at the time he read Mr. Shipley's email, he only had a vague idea that PhRMA was contemplating some sort of spending on messaging that would be separate from spending from the campaign committee's account. He did not have a keen appreciation for the fact that only certain types of coordinated messaging qualify as a "coordinated communication," and hence as an in-kind contribution: namely, those that meet the "content" elements set forth at 11 C.F.R. § 109.21(c). Similarly, he did not have a keen appreciation for the fact that all other types of messaging can be fully coordinated with a candidate or a candidate's operatives while steering clear of coordinated communication analysis (and in-kind contribution analysis, as a result). But Mr. Raymond did have a generalized sense that a trade association like PhRMA legally can undertake several types of messaging that would not qualify as prohibited contributions or expenditures under FECA. (As the Commission knows, these could be in the form of coordinated messages that don't meet any of the "content" elements in the FEC regulation, such as true issue ads mentioning no candidate, ads run more than 90 days before an election that mention a candidate but stop short of express advocacy, or internal communications that are coordinated with a candidate's operatives.) The important point is that even at this stage, there is no basis for concluding that Mr. Raymond was soliciting or directing any funds that were not perfectly permissible in connection with a federal election.

Apparently, at the June 26 meeting Congresswoman Hanabusa had with Mr. Shipley and Mr. Phillipone, she encouraged that these gentlemen connect with certain people: According to Mr. Shipley's email:

There were a couple people that the Congresswoman encouraged us to connect with, and I was hoping you could give some contact info on them. First, from Sen. Inouye's staff, she mentioned a former Chief of Staff back in Hawaii as well as a former Communications Director in DC. Unfortunately, I don't recall the names offhand, but perhaps if you knew them you could pass them on and we can reach out. Second, she also mentioned working with John Miyasato's organization, Crossroads Campaigns, which I assume is working the race for you guys as well; can you let me know who is the best contact over there to talk to? [Raymond Declaration, Attachments at CR000007]

While the foregoing hint of potential contacts might have had some significance for PhRMA and the Hanabusa campaign under "coordinated communication" analysis if there ultimately had been some PhRMA spending on public messaging that met the FEC's content standards, this is not relevant to whether Mr. Raymond solicited or directed PhRMA funds to be spent in any way that was not within the limits, prohibitions, and reporting rules of FECA.

Mr. Raymond on June 26 suggested in a follow-up email to Mr. Shipley, "Maybe if you have a few minutes before the end of the week I could fill you in on all the folks Colleen talked to you about and see who might be the best person to connect you with." Raymond Declaration, Attachments at CR000007. Two days later on June 28, Mr. Shipley and Mr. Raymond had a brief conversation, and Mr. Raymond only recalls vague references by Mr. Shipley to raising PAC contributions and doing some "independent stuff." Mr. Raymond recalls explaining that Mr. Miyasato was having a reduced role, such that he would not make a logical contact for gathering any information about the status of the campaign.

As the email referenced in the Complaint demonstrates, Mr. Raymond then sent an email that day (June 28th) to Rod Tanonaka (Hanabusa Chief of Staff and occasional volunteer for the campaign), Jennifer Sabas (occasional volunteer for the campaign), and Peter Boylan (volunteer for the campaign). He was simply following up on the request from Mr. Shipley for help in making contacts with certain persons associated with the Congresswoman's office or campaign. He made one careless reference that has generated controversy, unfortunately:

As I'm sure you have heard, PhRMA has committed to pulling together an independent expenditure on CH's behalf. Nick Shipley (Government Relations VP) and Bob Phillipone (Senior VP) are the leads on this and would like to be put in touch with folks on the campaign. After having talked with Nick about this a bit more, and based on our discussion, I came to the conclusion that it is the three of you the [sic] he would like to be in touch with. I am going to give him your email address so he can be in touch. I didn't feel comfortable giving out your phone numbers.

Should you be contacted by Nick or Bob please know they are good democrats. Let me know if you have any questions. [Raymond Declaration, Attachments at CR000011-12]

Mr. Raymond did not intend his use of "independent expenditure" to be a reference to any technical definition in the campaign finance laws. He at most intended it to refer to the "independent stuff" that Mr. Shipley earlier had suggested was being contemplated. He had not heard Mr. Shipley or others associated with PhRMA or the Hanabusa campaign use that term, and he believes he inadvertently used words that he had heard somewhere else, in a different context and perhaps in a different job. Mr. Raymond is not a campaign finance law expert, and he now greatly regrets having used a phrase that has a particular meaning under the law. Importantly, at this time he did not have knowledge of any specifics regarding what type of "independent stuff" PhRMA was contemplating. He had no knowledge of whether PhRMA was contemplating express advocacy messaging to the public, or merely messaging that would fall completely outside the FEC's content standards at § 109.21(c), or perhaps something altogether

different. He basically considered the phrases "independent stuff" and "independent expenditure" to be the same as a "third party payment" in a non-legal sense.<sup>3</sup> Again, though, the important point is that Mr. Raymond cannot be liable for *aiding or abetting* any *suggested* coordinated communication that never took place, and he has by the foregoing actions not triggered the ban on soliciting or directing any funds not subject to the limits, prohibitions, and reporting rules of FECA.

Shortly after sending the email message described above, Mr. Raymond sent an email to Mr. Shipley that indeed provided the names and email addresses of Mr. Tanonaka, Ms. Sabas, and Mr. Boylan:

Nick –

Just to followup on our conversation these are the folks you will want to reach out to:

Rod Tanonaka:

Jennifer Sabas:

Peter Boylan:

Let me know if you need anything else. Thanks again for your commitment to Hanabusa for Hawaii! [Raymond Declaration, Attachments at CR000004]

If the Commission is thinking this step by Mr. Raymond constitutes the "directing" of funds not subject to the limits, prohibitions, and reporting rules of FECA, the theory is not sustainable. First, as explained above, Mr. Raymond had no understanding or expectation that any spending or messaging by PhRMA would be *not* subject to the limits, prohibitions, and reporting rules of FECA. It would be perfectly permissible to refer a trade association to representatives of a candidate campaign to coordinate on issue ad messaging that made no reference to a candidate, or on ads referencing a candidate that are run more than 90 days from

<sup>3</sup> After sending the email to Tanonaka, Sabas, and Boylan, Ms. Sabas inquired, "What is this group?" Mr. Raymond replied, "The pharmaceutical industry." Ms. Sabas then wrote, "thanks." Mr. Raymond replied, "My guess is they will do mid to high six digits (\$\$) in mailers on our behalf." Raymond Declaration, Attachments at CR000011. As Mr. Raymond explained to the Department of Justice and FBI in his interview on October 7, 2013, he came to this guess after having asked a couple of his acquaintances not associated with PhRMA what kind of messaging PhRMA might be contemplating, and he further conducted some Internet research of what businesses or business groups had reported spending in some Senate campaigns. Mr. Raymond does not believe he got any information about "mailers" in "mid to high six digits" from Mr. Shipley or anyone else representing PhRMA. He believes in hindsight that he was curious about what PhRMA might be contemplating and then tried to appear more knowledgeable than he was about this when communicating with Ms. Sabas.

the election and devoid of express advocacy. The Commission's own "content" requirement in the coordinated communication regulations mandates this allowance. Mr. Raymond was not a sophisticated Hanabusa campaign operative, and he was within his legal rights to assume that the PhRMA representatives and the Hanabusa campaign operatives he was connecting to Mr. Shipley would devise any plans in accordance with the limits, prohibitions, and reporting rules of FECA. Second, the obvious scope of the restriction on "directing" funds not subject to FECA is to prevent an agent of a campaign from identifying some *other* candidate, political committee, or organization which is to *receive* such funds. See 11 C.F.R. § 300.2(n). An example would be if Mr. Raymond had identified some SuperPAC as a recommended place for PhRMA to send a contribution from its corporate treasury funds. This is a far cry from what occurred here: Mr. Raymond simply followed through on the request of Mr. Shipley for contacts at the Hanabusa campaign, while possessing no knowledge of what the "independent stuff" Mr. Shipley had referenced was to be. He was not identifying some candidate, committee, or organization that could receive PhRMA corporate funds for *receipt* of such funds. In sum, not even mental gymnastics can fit Mr. Raymond's actions into the prohibition on "directing" non-FECA funds.

### III. CONCLUSION

In view of the foregoing, there is no reason to believe Mr. Raymond acted in any way in violation of the Act or Commission regulations. It is respectfully submitted that the Commission should dismiss this matter forthwith.

Dated: March 18, 2014



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Scott E. Thomas, Esq.  
Aimee P. Ghosh  
DICKSTEIN SHAPIRO LLP  
1825 Eye Street, NW  
Washington, DC 20006  
(202) 420-2601 phone  
[thomasscott@dicksteinshapiro.com](mailto:thomasscott@dicksteinshapiro.com)